

reflect statutorily established mandatory bars to contracting with the FDIC.

(c) Except when one or more of the statutorily established mandatory bars to contracting are shown to exist, the existence of a cause for exclusion does not necessarily require that the contractor be excluded; the seriousness of the contractor's acts or omissions and any mitigating or aggravating circumstances shall be considered in making any exclusion decision.

§ 367.6 Causes for exclusion.

The FDIC may exclude a contractor, in accordance with the procedures set forth in this part, upon a finding that:

- (a) The contractor has been convicted of any felony;
- (b) The contractor has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the FDIC or their successors;
- (c) The contractor has demonstrated a pattern or practice of defalcation;
- (d) The contractor has caused a substantial loss to Federal deposit insurance funds;
- (e) The contractor has failed to disclose, pursuant to 12 CFR 366.6, a material fact to the FDIC;
- (f) The contractor has failed to disclosed any material adverse change in the representations and certifications provided to FDIC under 12 CFR 366.6;
- (g) The contractor has miscertified its status as a minority and/or woman owned business (MWOB);
- (h) The contractor has a conflict of interest that was not waived by the Ethics Counselor or designee;
- (i) The contractor has been subject to a final enforcement action by any federal financial institution regulatory agency, or has stipulated to such action;
- (j) The contractor is debarred from participating in other federal programs;
- (k) The contractor has been convicted of, or subject to a civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, or conspiracy to do the same;

(2) Violation of federal or state anti-trust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging, or conspiracy to do the same;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing of justice, or conspiracy to do the same;

(4) Commission of any other offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same;

(l) The contractor's performance under previous contract(s) with FDIC or RTC has resulted in:

(1) The FDIC or RTC declaring such contract(s) to be in default; or

(2) The termination of such contract(s) for poor performance; or

(3) A violation of the terms of a contract that would have resulted in a default or termination of the contract for poor performance if that violation had been discovered during the course of the contract; or

(m) The contractor has engaged in any conduct:

(1) Indicating a breach of trust, dishonesty, or lack of integrity that seriously and directly affects its ability to meet standards of present responsibility required of an FDIC contractor; or

(2) So serious or compelling in nature that it adversely affects the ability of a contractor to meet the minimum ethical standards required by 12 CFR part 366.

§ 367.7 Suspensions.

(a) The Ethics Counselor may suspend a contractor for any of the causes in § 367.8 using the procedures established in this section.

(b) Suspension is an action to be imposed when there exists adequate evidence of one or more of the causes set out in § 367.8. This includes, but is not limited to, situations where immediate